

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

WALTER JESSIE,

Defendant.

Indictment J07-F10

ABSTRACTED
GRANT PRICCE
MINGO CIRCUIT CLERK

2008 MAR 13 A 10:51

FILED
CIRCUIT COURT
MINGO COUNTY, WV

RESENTENCING ORDER

On the 7th day of March, 2008, appeared the Defendant, Walter Jessie, in person and by counsel, Robert B. Kuenzel, and the State of West Virginia, by Mingo County Assistant Prosecuting Attorney, Jerry Lyall, all before the Honorable Michael Thornsby, Chief Judge of the 30th Judicial Circuit, pursuant to Defendant's Motion to Resentence the Defendant for the Purposes of Appeal.

This Court had previously entered an Order denying Omnibus relief. Thereafter, the Defendant was re-sentenced and subsequently was granted an extension of time to appeal. The appeal time expired and the West Virginia Supreme Court of Appeals granted the Defendant relief to be re-sentenced.

Accordingly, it is hereby ORDERED that the Defendant's Motion to Resentence the Defendant for the Purposes of Appeal is GRANTED.

The Court FINDS that on May 9, 2007, the Defendant was convicted of Unlawful Assault, a violation of West Virginia Code § 61-2-9(a), a lesser included as charged in Indictment J07-F10.

It is hereby ORDERED that the jury trial findings are hereby incorporated by reference.

Whereupon, the Court inquired of the State of West Virginia, the Defendant and his counsel whether they had been furnished with a copy of the presentence investigation report prepared by the Probation Officer. In response to said inquiry, the State, the Defendant and his counsel replied in the affirmative. The Defendant and his counsel represented that they had reviewed the presentence investigation report at length and were afforded an adequate opportunity to make corrections or offer objections, amendments or additions thereto.

Whereupon, the Court inquired of counsel if either had anything to say regarding the sentence to be imposed.

Whereupon, the Court inquired of the Defendant if he had anything to say regarding the sentence to be imposed.

Whereupon, the Court reviewed the victim impact in the presentence investigation report and further inquired if the victim had any additional impact to offer.

After careful consideration of the presentence investigation report, arguments of counsel, Defendant's allocution and full record herein, the Court hereby incorporates by reference its findings made on the record and does ADJUDGE, ORDER and DECREE that the Defendant shall be taken from the bar of this Court to Southwestern Regional Jail to be kept, confined and subject to all rules and regulations thereof and be delivered to the custody of the West Virginia

Division of Corrections to be transported to a state correctional facility to be kept and confined as follows:

- Unlawful Assault - West Virginia Code § 61-2-9(a) –
An indefinite term of not less than one (1) year nor
more than five (5) years.

It is further ORDERED that the Defendant shall receive credit for three hundred seventeen (317) days served in at Southwestern Regional Jail, any other state correctional or regional jail facility and any hospital of any type while undergoing or awaiting evaluation.

It is further ORDERED that the Defendant's request for probation and/or alternative sentencing is DENIED.

It is further ORDERED that the Defendant shall be assessed fines, costs and restitution as follows:

FELONIES

Prosecuting Attorney Fee [PRO] [§ 59-2-17]	\$35.00
Crime Victim Compensation Fund [CVF] [§ 62-5-10(a&b)]	\$50.00 per count
Community Corrections Fund [CCF] [§ 62-5-10(a&b)]	\$25.00
Circuit Clerk [§59-1-11]	\$105.00
Community Corrections Conviction Fee [CCC] [§ 62-11C-4(d)]	\$10.00
Law Enforcement Training [LET]	\$2.00
Home Confinement	\$-0-
Magistrate Court	\$-0-
Court Reporter Fees [§ 51-7-6]	\$-0-
Appointed Counsel Fees	\$500.00
Fine	\$-0-
Restitution	\$ 30,000
Random Drug Screening	\$-0-
Jury Costs	\$ 2,558.57
Witness Fees	\$-0-
DUI Criminal [CLK]	\$-0-
DUI FEE [§14-2A-4(A)] An additional 20% of any fine imposed	\$-0-

Psychological Testing	\$-0-
Supervised Release Fee [Sexual Offender] [§ 62-12-26(d)]	\$-0-

Total of assessed fines, cost and restitution is \$ 33,285.57.

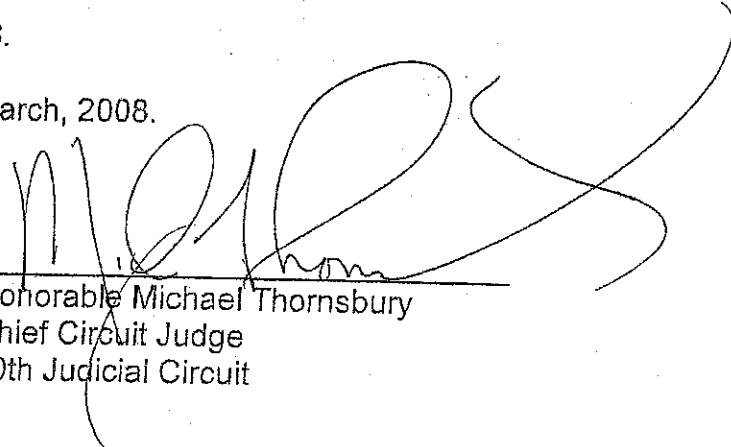
It is further ORDERED that the Defendant's counsel shall be given ten (10) days to file any written objections to this Order. If no such objections are filed within said period of time this Order shall continue with full force and effect.

It is further ORDERED that the Clerk shall forthwith prepare the necessary commitment papers to effect the sentence imposed herein and forward a certified copy of this Order to the West Virginia Division of Corrections.

It is further ORDERED that the Clerk shall forward a certified copy of this Resentencing Order to counsel of record and the Mingo County Probation Office

It is further ORDERED that the Clerk shall forward a certified copy of all orders granting release on probation, refusing such release in felony cases and revoking any previous orders shall be forwarded by the Clerk to the West Virginia Board of Probation and Parole within five (5) days after entering the same pursuant to West Virginia Code § 62-12-8.

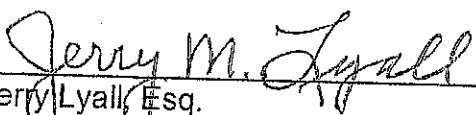
Entered on the 13th day of March, 2008.


Honorable Michael Thornsbury
Chief Circuit Judge
30th Judicial Circuit

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CIRCUIT CLERK, MINGO COUNTY, W.VA

Prepared by:


Jerry M. Lyall, Esq.

WV Bar No. 8905

MINGO COUNTY PROSECUTING
ATTORNEY'S OFFICE

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

MAY 17 A 11:06

v.

Indictment J07-F10

CLERK

WALTER JESSIE,

Defendant.

AMENDED JURY TRIAL ORDER

On the 8th day of May, 2007, came the State of West Virginia, by Assistant Prosecuting Attorney, Jerry M. Lyall and the Defendant, Walter Jessie, in person and by counsel, Robert B. Kuenzel, for a jury trial.

Whereupon, the Court read Indictment J07-F10 to the Defendant and the Defendant entered a not guilty plea.

Whereupon, the jury was selected in the manner provided by law, to-wit: Dwayne Pack, Cheryl Maynard, Danny Mitchell, Sandra Johnson, Judy Runyon, John Bowen, Gina Dotson, Agnes Justice, Ryan Huff, Daphene Steele, Lonnie Lackey, John Adams, Jr. and alternate juror, Carol Murphy.

Whereupon, the jury was duly sworn to render a verdict according to the evidence and given preliminary jury instructions.

Whereupon, proceedings were adjourned until the 9th day of May, 2007, at 9:00 a.m.

Whereupon, on the 9th day of May, 2007, the State of West Virginia and the Defendant gave opening statements.

Whereupon, the State of West Virginia presented evidence in chief and rested.

Whereupon, the Defendant moved for judgment of acquittal, which motion the Court DENIED.

Whereupon, the Defendant presented evidence in chief and rested.

Whereupon, the State of West Virginia presented rebuttal evidence and rested.

Whereupon, after final jury instructions, the State of West Virginia and the Defendant gave closing arguments.

Whereupon, alternate juror, Carol Murphy was released from service prior to jury deliberation.

Whereupon, the jury retired to deliberate and render a verdict.

After careful consideration of the evidence and jury instructions, the jury returned the following verdict, to-wit:

VERDICT:

We, the jury, regarding the charge of Malicious Assault as set forth in Indictment J07-F10, do hereby unanimously agree and find the Defendant, Walter Jessie:

Guilty of Unlawful Assault.

Signed: Danny R. Mitchell [Foreperson]

Date: 05-09-2007

Whereupon, the Defendant requested that the Jurors be polled, which request the Court granted and thereupon, the Court polled each of the Jurors.

Whereupon, neither the State of West Virginia nor the Defendant objected to the form of the verdicts.

Whereupon, the verdicts were accepted and directed to be recorded by the Circuit Clerk.

Whereupon, the Court ADJUDGED the Defendant convicted of one (1) count of Unlawful Assault.

Whereupon, the Defendant requested leave to file post-trial motions within the time allotted by the West Virginia Rules of Criminal Procedure, which request the Court sustained.

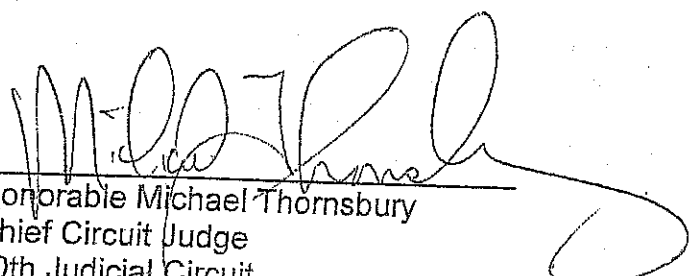
Whereupon, the Court ORDERED that the Defendant be assessed with jury costs in the sum of \$2,558.57 and advised the Defendant of post-conviction rights.

Whereupon, the Court further ORDERED that a presentence investigation be completed prior to sentencing.

Whereupon, the Court further ORDERED that sentencing of the Defendant be imposed on the 11th day of June, 2007, at 10:45 p.m.

Whereupon, the Court further ORDERED that the Defendant be remanded to Southwestern Regional Jail to await sentencing.

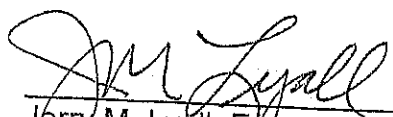
Entered on the 16th day of May, 2007.


Honorable Michael Thornsburg
Chief Circuit Judge
30th Judicial Circuit

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CIRCUIT CLERK, MINGO COUNTY, W.VA.

Prepared by:

A handwritten signature in dark ink, appearing to read "J M Lyall", written over a horizontal line.

Jerry M. Lyall, Esq.

WV Bar No. 8905

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